

Canada Industrial Relations Board



Conseil canadien des relations industrielles

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## Reasons for decision

Mr. Chad A. Wildman,

*complainant,*

*and*

CEVA Logistics Canada ULC,

*respondent,*

Board File: 29710-C

Neutral Citation: 2013 CIRB 675

February 5, 2013

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A panel of the Canada Industrial Relations Board (Board) composed of Mr. Graham J. Clarke, Vice-Chairperson, sitting alone pursuant to section 156(1) of the *Canada Labour Code* (*Part II Occupational Health and Safety*) (*Code*), considered the above-noted complaint.

Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to make this interim decision without an oral hearing.

### **Parties' Representatives of Record**

Mr. Chad A. Wildman, representing himself,

Mr. Neal Sommer, for CEVA Logistics Canada ULC.

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## **I—Nature of the Complaint**

[1] This decision considers a situation where a party's response raised only a few preliminary objections, but did not respond to the merits of a terminated employee's complaint.

[2] On November 19, 2012, Mr. Chad Wildman filed a complaint under Part II of the *Code*. Mr. Wildman alleged that his employer, CEVA Logistics Canada ULC (CEVA), had terminated him for raising safety concerns.

[3] On December 5, 2012, CEVA, through legal counsel, filed a submission raising certain preliminary objections. CEVA requested that the Board deal with those objections first. Those preliminary objections raised issues, *inter alia*, of timeliness and an alleged lack of a *prima facie* case.

[4] On December 24, 2012, Mr. Wildman replied to CEVA's position. On January 9, 2013, the Board's regional office advised the parties that the matter was being referred to a Board panel for its consideration.

## **II—Relevant Legislation**

[5] The *Canada Labour Code (Part I—Industrial Relations)* at section 16.1 does not oblige the Board to hold an oral hearing in every case:

16.1 The Board may decide any matter before it without holding an oral hearing.

[6] Section 12 of the *Canada Industrial Relations Board Regulations, 2001 (Regulations)* set out at the material time the requirements for a Response or Reply:

12. Any person who makes a response or reply must include the following information in the response or reply:

(a) the name, postal and email addresses and telephone and fax numbers of the respondent and of their legal counsel or representative, if applicable;

(b) the Board's file number for the relevant application;

(c) full particulars of the facts, relevant dates and grounds for the response or reply;

(d) a copy of supporting documents for the response or reply;

(e) the person's position relating to the order or decision sought by the applicant or respondent, as the case may be;

(f) an indication as to whether a hearing is being requested and, if so, the reasons for the request; and

(g) a description of the order or decision sought.<sup>1</sup>

(emphasis added)

[7] Parties have long been required to file their full submissions when responding to a Board matter. Those submissions may include preliminary objections. However, the raising of objections does not relieve a party from responding to the merits as well.

### III—Case Law

[8] The Federal Court of Appeal in *Nav Canada v. International Brotherhood of Electrical Workers*, 2001 FCA 30 confirmed the importance of parties filing full and complete submissions in Board matters:

[11] The scheme of the legislation and Regulations indicates that the Board will decide on the basis of the material filed unless it decides to hold an oral hearing or specifically requests additional evidence. No authority was provided to the Court for the proposition that the Board cannot do so, or that in order to treat the material filed as evidence, the Board must give notice to the parties of this intention.

[9] The Board's case law has similarly emphasized that parties must provide their full submissions within the time limits in the *Regulations*. An attempt to reserve the right to plead pending the disposition of preliminary objections may simply result in the Board deciding the case based on the submissions on file:

[13] The parties are well aware of section 16.1 of the *Code*, which permits the Board to decide any matter before it without holding an oral hearing. Accordingly, the Board expects parties to put forward their entire case at the time that the complainant or applicant files its complaint or application and the respondent files its written response. Parties who purport to "reserve the right" to file further submissions do so at their own peril, as there is no such right once the period for filing a response and reply to the application or complaint has expired. The Board may proceed to determine the matter on the basis of the record before it as soon as the deadline for submissions has passed.

(*Canadian National Railway Company*, 2009 CIRB 446)

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<sup>1</sup> The Board's Regulations have recently been updated (*Canada Industrial Relations Board Regulations, 2012 (SOR/2001-520)*), but those changes have not impacted the requirements of section 12.

[10] The Board in *Canadian National Railway Company*, 2009 CIRB 461, commented further on the importance of parties filing complete pleadings:

[20] The TCRC submitted at paragraphs 34 and 35 of its reconsideration application that the Board's process in this regard violated natural justice:

34. An essential element of the concept of natural justice is the right to have the opportunity to be heard and to fully present one's case. The parties ought to have been afforded the opportunity to put forward their arguments, and to have those arguments heard and considered.

35. In the circumstances of the present case, the original panel failed to consider the parties' full submissions, given that the Respondent raised a preliminary matter and requested that the Board summarily dismiss the Application. The Applicant TCRC replied only to the Respondent's preliminary matter.

[21] The Board recognizes that the parties' pleadings in a matter require a significant amount of preparatory work. Since the Board is not required to hold an oral hearing given section 16.1 of the *Code*, this long-standing detailed application process allows it to deal more expeditiously with the cases that come before it.

...

[24] The Board was therefore not required to chase CN for its submissions. Rather, if a party purports to reserve for a later time its right to make submissions, and thereby fails to file its response in accordance with the Board's *Regulations*, then the Board will decide the case based on the materials before it.

[11] In appropriate cases, the Board may decide unfair labour practice complaints based solely on the parties' written submissions: *Levesque*, 2011 CIRB 562.

[12] While the Board could have proceeded to decide Mr. Wildman's complaint based on the existing submissions, it has decided, exceptionally, to provide CEVA with a short time period to file a proper response to Mr. Wildman's complaint. In preparing their submissions, the parties may want to review recent decisions on the scope of the Board's jurisdiction under Part II of the *Code*, including:

1. *Air Canada*, 2011 CIRB 599
2. *Rathgeber*, 2010 CIRB 536
3. *Aker*, 2009 CIRB 474

[13] CEVA's submissions are due on **February 19, 2013**.

[14] Mr. Wildman will have until **February 26, 2013**, to file his Reply.

[15] If CEVA fails to provide its submissions within the time limits set out in this decision, then the Board will determine Mr. Wildman's complaint based solely on the submissions on file.

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Graham J. Clarke  
Vice-Chairperson